

COMMONWEALTH OF VIRGINIA

DELEGATE JOHN COSGROVE, Chair
SENATOR MAMIE LOCKE, Vice Chair
ELIZABETH A. PALEN, Executive Director



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VIRGINIA HOUSING COMMISSION

SUMMARY

Common Interest Communities Work Group House Room C, General Assembly Building June 6, 2012; 10:00 a.m.

Legislators present: Delegate John A. Cosgrove and Senator George Barker

Citizen members present: Janice Burgess, *Virginia Housing Development Authority*; Pamela Coerse, *Virginia Resort Development Association*; Tyler Craddock, *Manufactured & Modular Housing Association*; Chip Dicks, *Future Law*; Heather Gillespie, *Common Interest Communities Ombudsman*; Dale Goodman, *Virginia Resort Development Association*; Trisha Henshaw, *Common Interest Communities Board*; Ronald P. Kirby, *Virginia Association of Community Managers*; Chandler Scarborough, *Green Run Homes Association*; Melanie Thompson, *Citizen Member*; Michael Toalson, *Home Builders Association of Virginia*; Pia Trigiani, *Common Interest Communities Board*; and Jerry Wright, *Community Associations Institute*

VHC staff present: Elizabeth Palen, *Director of Virginia Housing Commission*; Iris Fuentes; and Laura Perillo

I. Welcome and Call to Order

- **Delegate Cosgrove, Chair**, called the meeting to order at 10:15 am.

II. Condominium and Property Owners' Association Acts; posting of documents on association's website (HB 668)

- **Del. Cosgrove** asked Ms. Elizabeth Palen to explain HB 668 due to Delegate S. Surovell's absence.
 - **Ms. Elizabeth Palen, Director of Virginia Housing Commission**, stated that HB 668 was introduced during the 2012 Session, but was not passed. Ms. Palen stated that perhaps the bill did not pass as a result of unclear wording. Ms. Palen explained that if the bill was passed as written, it would require the board of directors of Condominium Owners' Associations with existing websites to post a copy of the declaration, any articles of incorporation, and all rules and regulations adopted by the board of directors.

DELEGATE DAVID L. BULOVA
DELEGATE JOHN A. COSGROVE
DELEGATE ROSALYN R. DANCE
DELEGATE DANIEL W. MARSHALL, III
DELEGATE BARRY D. KNIGHT

SENATOR MAMIE E. LOCKE
SENATOR JOHN C. WATKINS
SENATOR GEORGE L. BARKER

MARK K. FLYNN
T.K. SOMANATH
MELANIE S. THOMPSON

- **Mr. Dale Goodman**, *Virginia Resort Development Association*; explained the limitations of this sort of bill related to technological problems regarding certain firewalls and password-only access to websites. He stated that many of the condominium associations have two websites: one that is private and one that is public. Mr. Goodman stated that as the bill is written, it would allow condominium associations to post their by-laws on their private websites and fulfill their obligation. Mr. Goodman pointed out that this would not accomplish the purpose of the bill: to allow purchasers to know the by-laws prior to purchasing a unit. He also responded to Del. Cosgrove's concern about the cost of programs that convert paper documents into pdfs, by stating that there are several inexpensive programs available to these condominium associations.
- **Mr. Michael Toalson**, *Home Builders Association of Virginia*; added that perhaps there should be a timeline specified in the bill that indicates when an Association must make these updates to their website.
 - **Del. Cosgrove** stated he agreed that any changes made to the original Association agreements and regulations would have to be published on the website according to some timeline. Del. Cosgrove added that he thought 90 days is enough time.
 - **Ms. Pia Trigiani**, *Common Interest Communities Board*; stated that she disagrees with adding a timeline to the bill, because she thinks that associations will know that the most recent versions of their declaration, articles of incorporation, and all adopted rules and regulations must be posted within a reasonable time.
- **Ms. Trigiani** stated that there are redundant clauses in the bill, namely Sections A through D.
- **Mr. Chandler Scarborough**, *Green Run Homes Association*; stated that larger associations will have a websites, but that smaller associations may not have an accessible website. Mr. Scarborough suggested that those smaller associations that do not have websites could be required to send their information to the state and that the state could be required to post this information on the state's website.
 - **Del. Cosgrove** stated that Mr. Scarborough's suggestion is outside the scope of this bill. Del. Cosgrove continued, stating that the bill does not require associations to make websites; rather, it requires associations that already have websites to add the pertinent information.
 - **Mr. Jerry Wright**, *Community Associations Institute*; asked whether timing was an issue for new associations.
 - **Del. Cosgrove** replied, stating that he thinks the 90 day comment was directed to changes in the rules, not that an association would have to create a website in that time.
- **Del. Cosgrove** asked if anyone in the audience had any comments or questions regarding this bill. Hearing none, Del. Cosgrove moved on, stating that the Workgroup would share their suggestions for change with Del. Surovell.

III. **Virginia Property Owners' Association Act; adopting and enforcement of rules (HB 979)**

- **Del. Cosgrove** asked Ms. Elizabeth Palen to explain HB 979 due to Delegate J. M. Scott's absence.
 - **Ms. Palen** stated that the VHC looked at HB 979 last year. Ms. Palen explained that Del. Scott wanted the bill to allow the board of a Property Owners' Association to go into a unit, make necessary changes, and charge the owner for the changes where the owner is not complying with the association's regulations.
- **Del. Cosgrove** asked if anyone on the Workgroup had comments regarding the bill.
- **Ms. Heather Gillespie**, *Common Interest Communities Ombudsman*, stated that DPOR has no opinion on this bill. Ms. Gillespie continued, stating that personally, she feels that the bill assumes that the boards of these associations are knowledgeable and efficient. Ms. Gillespie further stated that some of the boards of these associations are not equipped to undertake the sort of action this proposed bill allows.
- **Ms. Trigiani** stated that she worked closely with Del. Scott on the bill, and that the original bill said something completely different than the current version. Ms. Trigiani further stated that in condominium associations where the units are located one on top of the other, the associations' documents allow the boards to enter the units to make necessary repairs at the owners' expense. This is because there are various issues that can affect the property value and safety of the units below and above the problematic unit. Ms. Trigiani explained that this bill was an attempt by Del. Scott to codify the self-help powers that many associations' documents already give to the boards. Ms. Trigiani stated that when a unit reaches a particular condition it affects the neighboring units and prohibits unit owners from enjoying and/or selling their property. Ms. Trigiani explained that Del. Scott's constituent for this bill lived in McLean next to a person who had abandoned their property and moved overseas. Ms. Trigiani continued, stating that the unit fell into disrepair and many of the surrounding property owners were concerned. Ms. Trigiani explained that the bill would allow an association with proper notice to go on the lot, take measures to correct the problems and any costs of that repair would be pushed on to the owner. Ms. Trigiani continued, stating that even where associations currently have documents allowing this type of procedure, there are contractors who will not go into a property without a court order. Ms. Trigiani finished by stating that people need to know they have the power and authority to do this.
- **Mr. Toalson** stated that there are many examples of overzealous homeowner's associations. Mr. Toalson asked whether the Workgroup wanted to vest the boards of directors with the authority to enter and change someone else's property. Mr. Toalson continued acknowledging Ms. Trigiani's statement about some associations already having documents asserting this type of authority. Mr. Toalson commented on Ms. Trigiani's statement, claiming that the bill did not indicate these rights already existed. Mr. Toalson finished by stating that he would have a problem with this bill, as a member of a homeowners' association that leaves you a note if your empty garbage can is outside for more than ten minutes after the trash is collected.
 - **Ms. Trigiani** replied, stating that there are some overzealous associations, but many are only trying to enforce the rules and regulations to which the homeowner agreed.

- **Mr. Tyler Craddock**, *Manufactured & Modular Housing Association*; asked if there is any way that a Property Association could be held accountable for taking improper action within this bill. Mr. Craddock continued, asking how the association would be held accountable for improperly entering and changing a property owner's unit.
 - **Ms. Trigiani** stated that a homeowner who felt their unit was entered and changed improperly could file a complaint with their association, could appeal a decision from the association, and could file a complaint with an Ombudsman. Ms. Trigiani stated that another option for a homeowner is bringing suit for breach of fiduciary duty for taking action that exceeded the authority of the board.
- **Mr. Scarborough** stated that he has personally been on both sides of this dispute. Mr. Scarborough stated that in Virginia Beach, the city usually attempts to locate the homeowners before allowing the board to enter the unit. Mr. Scarborough continued, stating that neighbors are put in a bind because they have to wait around for the owner to be located.
- **Mr. Matt Bruni**, *Virginia Banker's Association*, stated that there are problems with the vague wording of the bill. Mr. Bruni stated that it might be difficult for associations and courts to define under what circumstances entering and repairing another's unit is reasonably necessary and what constitutes reasonable notice. Mr. Bruni continued, stating that where real estate will eventually be owned by the bank (e.g., foreclosure), the bank is prohibited from entering the property until they technically own the property. According to Mr. Bruni, it currently takes a year to foreclose a property. Mr. Bruni explained that the banks do not want to get charged for the cost of repairs if they are unable to enter the property to make the repairs themselves.

IV. Virginia Condominium Act; removes cap on charges that unit owner's associations may assess (HB 1213)

- **Del. Cosgrove** asked Ms. Elizabeth Palen to explain HB 1213 due to Delegate J. M. Scott's absence.
 - **Ms. Palen** stated that HB 1213 was filed in the 2012 session. Ms. Palen explained that the discussion during committee was whether the caps on charges could be removed. Ms. Palen explained that opponents of this bill stated that when a person entered into a contract with the unit owner's association they agreed to certain rules and regulations and to change them now would be unfair. Ms. Palen also explained that the committee discussed whether or not a person could file a lien for the unpaid assessments.
- **Del. Cosgrove** asked Mr. Chip Dicks if this bill would be something that is possible for the General Assembly to require.
 - **Mr. Chip Dicks**, *Future Law*; responded stating that it is always problematic to consider whether legislation can change an existing covenant. Mr. Dicks continued stating that there are certain associations that believe their documents trump pieces of legislation that the General Assembly has passed that contradict or otherwise change their pre-existing

agreements. Mr. Dicks explained that it would depend on the documents and the association whether the legislation could change existing contracts. Mr. Dicks concluded stating that it is clear that the General Assembly cannot abrogate an existing contract, but the question remains whether the board of directors of an association can alter the costs association with restrictions without amending the restrictions.

- **Mr. Toalson** asked who votes on amendments to the associations' instruments.
 - **Ms. Trigiani** stated that the members of the association, not the board of directors, votes on amendments to their instruments. Ms. Trigiani added that most association documents do not state an amount for the charge. Ms. Trigiani stated that the association cannot assess a charge without first having a hearing in order to preserve due process.
- **Ms. Trigiani** stated that the original intent of the General Assembly was to fill the void: when the bill was initially enacted there was no limitation on the length of the charge. Ms. Trigiani explained that the charge was limited to ten dollars a day or 50 dollars for a single offense, but there was no 90 day cap regarding these charges. Ms. Trigiani stated that the author of the legislation added that cap. As a result of the cap, Ms. Trigiani explained, that this 90 cap removes the impetus for unit owners to comply with the rules. Ms. Trigiani stated that the Supreme Court of Virginia heard a case regarding the application of the authority to assess charges and that there is a split in the circuits regarding the constitutionality of this where the law conflicts with the associations' documents. According to Ms. Trigiani, the Fairfax Circuit stated that the documents must include the charge and the Loudoun Circuit has stated that it does not need to be in the documents. Ms. Trigiani stated that she does not think there is a constitutional issue; however the issue remains whether the General Assembly believes associations can assess a reasonable charge.
 - **Del. Cosgrove** responded, stating that if the monetary limits were removed from the bill, the associations could easily charge \$1,000.
 - **Ms. Trigiani** stated that she does not think it would be a wise choice to take the monetary limitations out. Ms. Trigiani stated that if the violation is of a continuing nature, the unit owners do not have a reason to comply with the rule so long as they can afford the charge for 90 days.
- **Mr. Scarborough** stated that his experience has been the same as Ms. Trigiani's: the association documents do not generally state a monetary amount to be charged. According to Mr. Scarborough, the issue is that the \$50 and \$10 charges have not been increased in 15 years, despite the value of that money and of the properties changing drastically. Mr. Scarborough also stated that its problematic that a person who has committed a minor offense will likely be charged the same amount as someone who has committed a major offense. Mr. Scarborough stated that he is uncertain how to fix these problems, but suggested that a flexible cap might be added to the bill depending on what is reasonable according to the circumstances of the offense. Mr. Scarborough suggested there might be a lien for the charges and a lien procedure.
 - **Ms. Trigiani** stated that she does not like the idea of adding a lien part to the bill because it "muddies the water" regarding who has the authority to

enforce the lien. Ms. Trigiani agreed with Mr. Scarborough that the current assessment is not a deterrent.

- **Del. Barker** asked the commission as a whole whether anyone was aware of time where the \$50 and \$10 charges were inefficient in deterring persons who did not comply with the association's rules and regulations.
 - **Ms. Trigiani** replied, stating that 25 to 30 years ago, a woman moved into an association's community that did not allow pets. Ms. Trigiani stated that despite agreeing to not have pets, the woman purchased a cat and cared for it. Ms. Trigiani stated that when the association approached the woman and asked her to get rid of her cat, she refused and instead wrote the association a check for the full amount of the charges for 90 days. Ms. Trigiani stated that where the offender is willing to pay the 90 days worth of charges, there is no deterrent nature to this law. Ms. Trigiani also stated that these charges should not be a penalty; rather they should be a means to get persons who agreed to rules and regulations to comply with those rules and regulations. Ms. Trigiani finished by stating that this law should not be considered a way for associations to make money, it should be a way for associations to get their members to follow the rules.
- **Del. Barker** asked whether a two-tiered structure should be added to the bill so that repeat offenders are required to pay more, in an effort to create a deterrent.
 - **Ms. Trigiani** stated that she would be comfortable with the addition of a two-tiered system, provided it is drafted to be an effective deterrent.
 - **Del. Cosgrove** added that what may be a monetary deterrent to association members in Fairfax may be absolutely crushing to association members in Southwest Virginia. Del. Cosgrove continued, stating that he did not think the commission was equipped to geographically disperse or assess what is reasonable throughout the state.
 - **Mr. Dicks** stated that he thinks the caps should remain and that the two-tiered cap for violations is a good idea. Mr. Dicks stated that minor and major violations should not be treated the same and that the bill should delineate between safety and health issues and other issues. Mr. Dicks suggested that the bill could provide higher charges for more serious violations. Mr. Dicks stated that he agreed with Ms. Trigiani's suggestion about injunctions, but thinks there should be some sort of solution short of going to court.
- **Mr. Toalson** asked whether anyone was concerned about removing the 90 day limitation. Mr. Toalson reiterated Mr. Dick's suggestion about the tiered charging method and asked whether the charges would continue to increase indefinitely.
- **Del. Cosgrove** asked how appropriate it would be to file a lien for future assessments.
 - Several members of the commission, including **Ms. Trigiani** and **Ms. Palen**, responded that the language discussing that was flawed, as a lien for future assessments is not a legally viable option.

V. Public Comment and adjournment

- **Mr. Dicks** stated that he would like to discuss another bill regarding lender information at the next workgroup meeting with the bankers, realtors, community managers, and CRI.
- **Del. Cosgrove** asked if those in the audience had any other comments or concerns.
- Hearing none, the meeting was adjourned at 11:03 a.m.